

HON. RONALD B. LEIGHTON

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

HIDDEN HILLS MANAGEMENT, LLC,
and 334TH PLACE 2001, LLC

Plaintiffs,

v.

AMTAX HOLDINGS 114, LLC, and
AMTAX HOLDINGS 169, LLC

Defendants.

AMTAX HOLDINGS 114, LLC, AMTAX
HOLDINGS 169, LLC, and PARKWAY
APARTMENTS, LP

Counter-Plaintiffs,

v.

HIDDEN HILLS MANAGEMENT, LLC,
and 334TH PLACE 2001, LLC

Case No. 3:17-cv-06048-RBL

DECLARATION OF ROBERT J.
SULLIVAN

I, Robert J. Sullivan, have personal knowledge of the facts stated herein.

1. I have been a member of the Washington State Bar since 1989 and the Oregon State Bar since 1983. I specialize in real estate transactions with an emphasis on those involving low-income housing tax credit ("LIHTC") financed properties. In my career, I have represented

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1 parties in approximately 100 LIHTC projects. My clients include owners, developers, investors,
2 lenders, governmental agencies, housing authorities and nonprofit entities.

3 2. In 2001, I represented Catherine Tamaro and Hidden Hills Management LLC
4 (“HHM”) in connection with the purchase and rehabilitation of the Hidden Hills apartment
5 complex near Tacoma, Washington. I make this declaration without revealing any legal advice
6 provided during the representation and without waiver of any applicable work product or
7 attorney-client privilege.

8 3. I remember the Hidden Hills transaction well because of the unique nature of the
9 environmental issue and the solution implemented to complete the transaction. No other
10 property transaction I have worked on applied this method.

11 4. The soil at the property is contaminated with levels of lead and arsenic that may
12 require cleanup due to particulate matter discharged from the Asarco smelter. The contamination
13 made the negotiations among the partnership, its partners (HHM and Paramount Financial
14 Group, Inc., the syndicator that owned the limited partner, Amtax Holdings 114, LLC), the
15 seller, the lenders, and the regulatory agencies very lengthy and complicated. This
16 environmental issue was so difficult that the sale almost failed. All parties had representation of
17 legal counsel and most retained environmental consultants as well.

18 5. The solution contained three elements. First, the seller agreed to split off a parcel
19 of undeveloped land and to reduce the sale price of the property by \$700,000. Second, the lender,
20 and its loan purchaser Fannie Mae, required the Partnership deposit over \$1,000,000 (the
21 estimated cost to clean-up the site) in immediately available funds into escrow to pay for any
22 required remediation. Amtax Holdings 114, LLC (“Amtax”) through its legal counsel insisted
23 that HHM put up the necessary cash to fund the escrow. Third, the Hidden Hills 2001, LP, (the
24 “Partnership”) purchased an environmental insurance policy to pay for environmental claims
25 against the property for any unknown conditions. HHM paid the premium for this policy. With
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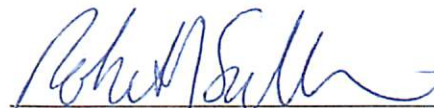
1 the lower purchase price, the \$1,000,000 escrow and environmental insurance policy, the
2 transaction closed on January 30, 2002.

3 6. The solution addressed the concern the Partnership as purchaser might be required
4 in the future by Washington State Department of Ecology ("Ecology") to clean up the property.
5 No clean-up was required.

6 7. I was also involved in the negotiation and drafting of the Environmental Indemnity &
7 ADA Compliance Agreement between HHM (the general partner) and Amtax Holdings 114,
8 LLC (the limited partner). The Partnership is not a party to the Indemnity Agreement. The
9 intent of the Indemnity Agreement was to allocate the financial risk for environmental issues
10 between the general and limited partners. Of specific concern was whether Ecology would
11 require a cleanup, and that the cost of the cleanup might exceed the amount of escrowed funds
12 and/or the proceeds of the environmental insurance policy. By requiring the general partner to
13 "indemnify, hold harmless and defend" the limited partner against Environmental Liabilities, the
14 Indemnity Agreement shifted this financial risk to the general partner for future clean-up. The
15 Indemnity Agreement had nothing to do with any diminution of the property value, as that issue
16 was addressed at the time of acquisition by the seller's reduction of the price paid by the
17 Partnership. The Indemnity Agreement applies if Ecology requires Amtax to clean-up the
18 property or a third party makes a claim against Amtax related to the environmental condition.

19 I declare under penalty of perjury of the laws of the United States and of the State of
20 Washington that the foregoing is true and correct.

21 DATED this 10th day of December, 2018, at Clackamas, Oregon

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24 
25 Robert J. Sullivan
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CERTIFICATE OF SERVICE

I hereby certify that on the 11th day of February, 2019, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following participants:

- **David J. Burman**
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Dated February 11, 2019.

s/ Debbie Dern
Debbie Dern
Legal Practice Assistant
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